

MINUTES
BOARD FOR LICENSING HEALTH CARE FACILITIES
November 3, 2004

The Board for Licensing Health Care Facilities was called to order by Dr. Larry Arnold on November 3, 2004, commencing at 9:00 a.m.

Ms. Green called the roll to establish a quorum.

Dr. Larry Arnold, Chairman
Dr. James T. Galyon, Chairman Pro Ten
Mr. Ron Arrison
Ms. Charlotte Burns
Ms. Elizabeth Chadwell
Mr. Robert Gordon
Dr. Terry Horgan
Mr. Albert Jones
Dr. Douglas Leahy
Dr. Joe T. Walker

Members not present:

Dr. Duane Budd
Dr. Clifton Exum
Mr. Jim Hastings
Ms. Annette Marlar
Ms. Nancy Peace
Ms. Geraldine Smelcer
Dr. Roxane Spitzer
Dr. Jon Winter
Ms. Bettye Zier

Present and representing the Office of General Counsel:

Mr. Ernie Sykes

Also present:

Ms. Cathy Green, Director, Board for Licensing
Ms. Katy Gammon, Director, Health Care Facilities
Ms. Wanda Hines, Board Administrator
Ms. Faye Vance, East TN Regional Administrator
Ms. Shirley Jones, West TN Regional Administrator
Ms. Nina Monroe, Middle TN Regional Administrator

A quorum was established by roll call vote.

APPROVAL OF MINUTES

The first order of business was approval of the telephonic board meeting minutes of June 30, 2004 and the minutes from the August 4, 2004 board meeting.

Motion was made by Mr. Arrison, seconded by Mr. Gordon to approve the minutes as written.

Motion carried.

REPORTS TO THE BOARD

Nurse Aide Training

Ms. Jacqueline Johnson presented the Nurse Aide Training Program report. Dr. Galyon suggested to the Board that instead of Ms. Johnson verbally presenting her report each board meeting that her report would be included in the board members' packet. Ms. Johnson will be available at the board meeting in case there are questions regarding the nurse aide training program report.

Motion was made by Dr. Galyon, seconded by Mr. Arrison to approve the Nurse Aide Training Program report will be included in the mailed board packet and Ms. Johnson will be available for any questions.

Motion carried.

Department Report

Ms. Green gave an update on Unusual Events. Ms. Green informed the Board that they are upgrading the electronic reporting system (UIRS). Facilities that have been working on a user group the last year and half are beta testing the system and their implemented recommendations. The second cycle of beta testing is going on at this time. It will be rolled out to all facilities the first of January. All providers licensed by HCF will receive a letter with new user name and password in mid-December.

Ms. Green also discussed the Refund of RHA licensure fees what is included as part of our rule changes for final filing, the CoPEC Update, and the Patient Safety Grant. Ms. Green also informed the Board on the sprinkler updates. The process has been worked out within the Department, and after the facility has received a final inspection, they will be taken off of the list the following month. Out of 88 nursing homes, 36 have already submitted their plans, which is 41 percent of those facility types. We are on our way to getting those plans and sprinkler systems in place. Also, a copy of the final document on Trauma Care System Plan was included in the board packet to view. Mr. Gordon was thanked for his participating on the Trauma Care Advisory Council task force.

DISCUSSION

Paris Manor Nursing Center

Paris Manor Nursing Center is an example of the type of letters and documentation we are receiving from facilities who are submitting their plans to be sprinklered or who are going through the CON process to replace their facility. We wanted the board to be aware of the type of letters the Department was receiving.

REGULATIONS

BOARD APPROVAL TO GO TO RULEMAKING HEARING

1200-8-1 Standards for Hospital

1200-8-10 Standards for Ambulatory Surgical Treatment Centers

Revising rules to reflect Public Chapter 532 which requires hospitals and ASTCs to employ surgical technologists who meet certification requirements providing a grandfathering provision and procedure for board to grant waiver if a facility can demonstrate the inability to recruit sufficient numbers of qualified staff.

Motion was made by Dr. Galyon, seconded by Dr. Leahy to:

SEND THE HOSPITAL AND AMBULATORY SURGICAL TREATMENT CENTER RULES FOR RULEMAKING HEARING.

Motion carried.

1200-8-1 Hospitals

1200-8-10 ASTC

1200-8-11 RHA

1200-8-15 Residential Hospice

1200-8-17, 22, 23, A/D Residential Rehab, Halfway House & Residential Detox

1200-8-18 Non-Residential Treatment Facilities

1200-8-19 DUI School Facilities

1200-8-20 Prevention Program Facilities

1200-8-21 Non-Residential Narcotic Treatment Facilities

1200-8-24 Birthing Centers

1200-8-25 ACLF

1200-8-26 Home Health

1200-8-27 Hospice

1200-8-28 HIV Supportive Living

1200-8-29 Home Medical Equipment

1200-8-32 ESRD

Revising rules to reflect Public Chapter 780 which requires all licensed facilities to post contact numbers for Adult Protective Services and local District Attorney (Nursing Homes already comply with 68-11-254 and are exempt).

Motion was made by Dr. Galyon, seconded by Ms. Burns to:

SEND THE HOSPITALS, ASTCS, RHAS, RESIDENTIAL HOSPICE, RESIDENTIAL REHAB, HALFWAY HOUSE, RESIDENTIAL DETOX, NON-RESIDENTIAL TREATMENT FACILITIES, DUI SCHOOL FACILITIES, PREVENTION PROGRAM FACILITIES, NON-RESIDENTIAL NARCOTIC TREATMENT FACILITIES, BIRTHING CENTERS, ACLF, HOME HEALTH, HOSPICE, HIV SUPPORTIVE LIVING, HOME MEDICAL EQUIPMENT, AND ESRD RULES FOR RULEMAKING HEARING.

Motion carried.

1200-8-35 Outpatient Diagnostic Centers

Promulgation of new rules as Public Chapter 917 requires Outpatient Diagnostic Centers to become licensed by Health Care Facilities.

Dr. Galyon expressed his concerns of being able to add new technological procedures not listed in Outpatient Diagnostic Center definition. Mr. Sykes pointed out statute refers to definition as established by Health Services Development Agency (HSDA). The Department agreed to communicate concerns to HSDA.

Motion was made by Dr. Horgan, seconded by Dr. Galyon to:

SEND THE OUTPATIENT DIAGNOSTIC CENTERS RULES FOR RULEMAKING HEARING.

Motion carried.

APPROVAL FOR FINAL FILING

1200-8-11 Standards for Home for the Aged

Revises fees for less than 6 beds and requires one set of schematic for existing single family dwellings being converted to RHA with 6 or fewer beds.

Motion was made by Mr. Arrison, seconded by Mr. Gordon to:

FORWARD THE HOME FOR THE AGED RULES FOR FINAL FILING.

Motion carried by roll call vote.

1200-8-1 Hospitals

This reflects Public Chapter 654 that changes the requirements for the Joint Annual Report.

Motion was made by Dr. Galyon, seconded by Mr. Arrison to:

FORWARD THE HOSPITAL RULES FOR FINAL FILING.

Motion carried by roll call vote.

1200-8-1 Standard for Hospitals

1200-8-6 Standard for Nursing Homes

1200-8-2 Prescribed Child Care

1200-8-10 ASTC

1200-8-11 RHA

1200-8-15 Residential Hospice

1200-8-17, 22, 23 A/D Residential Rehab, Halfway House and Residential Detox

1200-8-24 Birthing Centers

1200-8-25 ACLF

1200-8-26 Home Health

1200-8-27 Hospice

1200-8-28 HIV Supportive Living

1200-8-32 ESRD

1200-8-34 PSS

Revises rules to reflect the Health Care Decisions Act. Model forms to be recommended to board for approval.

Ms. Green opened the discussion regarding the Health Care Decision Act regulations. There were several comments submitted from the rulemaking hearing from Charles Key, Attorney, the Tennessee Hospital Association, Rufus Jones with REJ & Associates representing the West Tennessee Residential Homes for the Aged and Chris Puri, Attorney from the Tennessee Health Care Association. The Department discussed with their legal counsel and took into consideration all of the comments that were received during the rulemaking process. Rufus Jones addressed the Board as well as Chris Puri and Charles Key regarding their comments and recommendations. The Department had recommendations to reflect changes to go for final filing. Discussion concerning the definition of the advance directive and individual instruction was deferred until vote on regulations took place.

Motion was made by Dr. Leahy, seconded by Mr. Gordon to:

PROCEED WITH SENDING REGULATIONS THROUGH RULEMAKING PROCESS PROVIDED THE "INDIVIDUAL INSTRUCTION" LANGUAGE DEFINITION OF ADVANCE DIRECTIVE.

Motion carried by roll call vote.

Motion was made by Dr. Galyon, seconded by Mr. Arrison to:

FORWARD THE HEALTH CARE DECISION ACT RULES FOR FINAL FILING AS WAS MODIFIED TODAY.

Motion carried by roll call vote.

HEALTH CARE DECISION ACT FORMS

The next item under approval for Rulemaking hearing deals with the Health Care Decision Act forms. We are requesting the Board to approve the forms that were not part of the rules that was submitted to rulemaking hearing. There are two forms, one is the Advance Care Plan form and the other is the Physician Order for Scope of Treatment (POST) form. The Advance Care Plan form was revised based on comments from Mr. Key. This form could be used even if it is not witnessed or notarized to provide advance instruction to health care providers and to designate a surrogate to help make all health care decisions on your behalf. Debbie Larios, Attorney for Miller & Martin commented on concerns regarding the language and other issues. Mr. Key also commented on the language and other issues such as organ/tissue donation. Chris Puri also informed the Board of his concerns on both forms but acknowledge the work that has been done with Ms. Larios, Mr. Key, himself and the Department in assembling of the rules and forms. Mr. Puri made a request of the Department to allow the advisory group to get together and work on these issues regarding the forms. Ms. Green stated that the Department is willing to pull the advance directive task force back together to look at the comments that are received from the public after the forms go to rulemaking hearing. Ms. Green reassures Mr. Puri that the Department is in agreement to work with the task force group.

Motion was made by Mr. Gordon, seconded by Dr. Leahy to:

FORWARDED THE ADVANCE CARE PLAN FORM AS DRAFTED TO RULEMAKING HEARING.

Motion carried.

Ms. Green opened the discussion regarding the Physician Order for Scope of Treatment (POST) form. Ms. Green informed the Board that a 2002 Last Acts report was done regarding dying in America in which they rated each of the states across the country on their quality of care at end of life. Tennessee rating was a C; but in the quality of the state advance directive laws, Tennessee was rated a D. The feeling of the Department is that this form would further improve end-of-life care for those patients who are in the end of life. Ernie Sykes, Attorney for the Office of General Counsel gave the Department's position and legal opinion that the POST form is permissible and authorized by the statute which includes Do Not Resuscitate orders, as the POST form does, and contains additional information for the benefit of health care practitioners and for the patients, which would greatly improve the quality of care for end-of-life patients. Judy Eads, Assistant Commissioner of the Bureau of Health Licensure and Regulations informed the Board since there are different attorneys' interpretation of this particular form; further clarification is warranted, then it would be the Board's request to get an Attorney General's opinion.

Motion was made by Dr. Leahy, seconded by Dr. Walker to:

ASK THE ATTORNEY GENERAL TO CLARIFY WHETHER THE BOARD HAS AUTHORITY TO PROMULGATE AND APPROVE THE POST FORM.

Motion carried.

Mr. Key approached the Board regarding his comments regarding the POST form. Mr. Puri stated the comments they had made before relative overall to the process were meant to pertain to both the Advance Care form and the POST form. Mr. Puri advised the Board that the advance task advisory committee will help resolve the issues relatively to the POST form as well as others issues could be worked out. Mr. Puri agreed that getting the opinion from the Attorney General is a wise thing to do and also proceeding with the rulemaking while that opinion is being requested. Ms. Larios pointed out to the Board that they had problems with what is on the POST form as well.

Motion was made by Dr. Galyon, seconded by Mr. Arrison to:

FORWARD THE POST FORM TO RULEMAKING HEARING.

Motion carried.

Mr. Key presented an alternative form; Appointment of Health Care Agent for consideration and adoption. Mr. Sykes informed the board that the form Mr. Key had presented would be offered for information and submitted as comments for the task force. The Board took no formal action on this form at this time. Ms. Green stated on behalf of the Department that it will be presented to the task force for discussion and comments as well.

1200-8-1 Hospital
1200-8-6 Nursing Homes
1200-8-10 ASTC
1200-8-11 RHA
1200-8-15 Residential Hospice
1200-8-17 Residential Rehab
1200-8-22 Halfway House
1200-8-23 Residential Detox
1200-8-24 Birthing Centers
1200-8-25 ACLF
1200-8-28 HIV Supportive Living
1200-8-32 ESRD

Revising the Building Standards to reflect safe practices in building construction and renovation.

Chris Puri, Attorney representing the Tennessee Health Care Association had concerns about adopting these rules. The Department has agreed to place new codes on the board agenda at one meeting, and that way it is open for discussion. The Board would then vote to approve the edition of the building standards at the next following meeting.

Motion was made by Mr. Arrison, seconded by Dr. Galyon to:

FORWARD THE BUILDING STANDARDS RULES FOR HOSPITALS, NURSING HOMES, ASTCS, RHAS, RESIDENTIAL HOSPICE, RESIDENTIAL

**REHAB, HALFWAY HOUSE, RESIDENTIAL DETOX, BIRTHING CENTERS,
ACLF, HIV SUPPORTIVE LIVING, AND ESRD RULES FOR FINAL FILING.**

Motion carried.

WAIVER REQUESTS

Ms. Green gave a brief summary of each of the following waiver requests:

Appalachian Christian Village, Johnson City

Tom Sexton, CEO, Appalachian Christian Village at Sherwood, a twenty (20) bed assisted care living facility, is requesting a waiver per Board Policy #51 and Rule 1200-8-25-.06(7) to use the same laundry that is located in the health care wing of Appalachian Christina Village Nursing Home.

Motion was made by Mr. Arrison and seconded by Dr. Galyon to:

**GRANT A WAIVER ACCORDING TO RULE 1200-8-25-.06(7) AND BOARD
POLICY #51 TO ALLOW THIS ASSISTED CARE LIVING FACILITY TO USE
THE SAME LAUNDRY THAT IS LOCATED IN THE HEALTH CARE WING
OF APPALACHIAN CHRISTIAN VILLAGE NURSING HOME.**

Motion carried.

SunBridge of Winchester, Winchester

Bruce DiBernardo, Regional Manager of SunBridge of Winchester, is requesting a waiver for Hal McPheeters to serve as administrator of this eighty (80) bed licensed nursing home. This position is vacated due to administration turnovers. Mr. McPheeters is to serve as administrator while he completes his application for reciprocity in Tennessee.

Motion was made by Mr. Arrison and seconded by Dr. Galyon to:

**GRANT A NINETY (90) DAY WAIVER TO ALLOW MR. MCPHEETERS TO
SERVE AS ADMINISTRATOR WHILE COMPLETING HIS APPLICATION
FOR TENNESSEE NURSING HOME ADMINISTRATOR LICENSE.**

Motion carried.

**AmeriCARE Health Care of Memphis, LLC (formerly Oakville Health Care Center),
Memphis**

This two hundred thirty-seven (237) bed nursing home is requesting a waiver of the requirement for a licensed nursing home administrator until a replacement can be found. Michael E. Hampton, Chief Executive Officer has assumed temporary responsibility with the assistance of the director of nursing for administration of the facility.

Motion was made by Dr. Galyon, seconded by Mr. Gordon to:

GRANT A NINETY (90) DAY WAIVER TO ALLOW THE FACILITY TO OPERATE WITHOUT A LICENSED NURSING HOME ADMINISTRATOR UNTIL A PERMANENT ADMINISTRATOR CAN BE FOUND.

Motion carried.

CONSENT CALENDAR

Motion was made by Dr. Galyon, seconded by Mr. Arrison to:

APPROVE WAIVER REQUESTS ON THE CONSENT CALENDAR.

Motion carried.

THE FOLLOWING FACILITIES WERE APPROVED TO PROVIDE ADULT DAY CARE:

Jackson Park Christian Home, Inc., Nashville

THE FOLLOWING FACILITIES WERE GRANTED WAIVERS TO PROVIDE OUTPATIENT THERAPY SERVICES AS PROVIDED FOR BY POLICY 32:

**Ridgely Care and Rehabilitation Center, Ridgely
Rivermont Care and Rehabilitation Center, South Pittsburg**

With all business concluded, Dr. Galyon adjourned the meeting.

Respectfully submitted,

James T. Galyon, M.D.